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**MONSANTO COMPANY**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS  
LIABILITY LITIGATION

MDL No. 2741  
Case No. 3:16-md-02741-VC

This document relates to:

*Rodney Allen Woodruff v. Monsanto Co.*,  
Case No. 3:17-cv-06606-VC

**MONSANTO COMPANY'S ANSWER TO PLAINTIFF'S COMPLAINT**

Pursuant to Rule 12 of the Federal Rules of Civil Procedure, Defendant Monsanto Company ("Monsanto"), by and through its counsel, respectfully responds by generally denying all allegations contained in plaintiff Rodney Allen Woodruff's Complaint and Jury Demand ("the Complaint"), except as set forth below. As defined in the Complaint and as used in this Answer, Monsanto refers to Monsanto Company, a United States based company incorporated in Delaware, and not to other Monsanto-affiliated companies. Silence as to any allegations shall constitute a denial.

1. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 1 and therefore denies those allegations.

2. Monsanto admits that it is incorporated under the laws of the State of Delaware and that it is authorized to do business in the State of Mississippi. The remaining allegations in paragraph 2 set forth conclusions of law for which no response is required.

1           3.       Monsanto lacks information or knowledge sufficient to form a belief as to the  
2 truth of the allegations concerning plaintiff's citizenship. The remaining allegations in paragraph  
3 3 set forth conclusions of law for which no response is required. To the extent that a response is  
4 deemed required, Monsanto admits the remaining allegations in paragraph 3.

5           4.       In response to the allegations in the first sentence of paragraph 4, Monsanto  
6 admits that it has designed, manufactured and sold Roundup<sup>®</sup>-branded products. The remaining  
7 allegations in the first sentence of paragraph 4 are vague and ambiguous and are accordingly  
8 denied. In response to the allegations in the second sentence of paragraph 4, Monsanto admits  
9 that its Roundup<sup>®</sup>-branded products contain glyphosate and other ingredients, and that the  
10 specific formulations used in Roundup<sup>®</sup>-branded herbicides – like those in other manufacturers'  
11 herbicide products – are protected by the Environmental Protection Agency ("EPA") as "trade  
12 secrets."

13           5.       Monsanto lacks information or knowledge sufficient to form a belief as to the  
14 truth of the allegations in paragraph 5 and therefore denies those allegations.

15           6.       Monsanto lacks information or knowledge sufficient to form a belief as to the  
16 truth of the allegations in the first two sentences of paragraph 6 and therefore denies those  
17 allegations. In response to the allegations in the final sentence of paragraph 6, Monsanto lacks  
18 information or knowledge sufficient to form a belief as to the truth of the allegations regarding  
19 whether any Roundup<sup>®</sup>-branded herbicides were sold to plaintiff and regarding his state of  
20 knowledge and therefore denies those allegations. In response to the remaining allegations in the  
21 final sentence of paragraph 6, Monsanto denies that there were any "fallacies" on the Material  
22 Safety Data Sheets or labels for Roundup<sup>®</sup>-branded herbicides. Monsanto notes that glyphosate  
23 repeatedly has been found to be safe to humans and the environment by regulators in the United  
24 States and around the world and further notes that it has labeled glyphosate products as approved  
25 by regulatory bodies consistent with those findings. Monsanto also notes that the EPA  
26 repeatedly has concluded pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act  
27 ("FIFRA") that glyphosate-based herbicides create no unreasonable risk to human health or to  
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the environment when used in accordance with the label. Monsanto further notes that: (a) in September 2016, EPA's Office of Pesticide Programs ("OPP") issued a 227-page evaluation of glyphosate's carcinogenic potential, concluding that "[t]he strongest support is for [the descriptor] 'not likely to be carcinogenic to humans' at doses relevant to human health risk assessment";<sup>1</sup> and (b) at the same time, EPA posted an October 2015 final report by its standing Cancer Assessment Review Committee ("CARC"), in which CARC endorsed EPA's existing classification of glyphosate as "Not Likely to be Carcinogenic to Humans."<sup>2</sup> In addition to the conclusions in the EPA OPP Report and the EPA CARC Final Report, other specific findings of safety include:

- "In June 1991, EPA classified glyphosate as a Group E [carcinogen]—one that shows evidence of non-carcinogenicity for humans—based on the lack of convincing evidence of carcinogenicity in adequate studies." EPA, *Glyphosate: Reregistration Eligibility Decision (RED) Facts*, 2 (Sept. 1993), <http://archive.epa.gov/pesticides/reregistration/web/pdf/0178fact.pdf>.
- "No evidence of carcinogenicity." Glyphosate; Pesticide Tolerances, 67 Fed. Reg. 60,934, 60,943 (Sept. 27, 2002) (to be codified at 40 C.F.R. pt. 180).
- "Glyphosate has no carcinogenic potential." Glyphosate; Pesticide Tolerance, 69 Fed. Reg. 65,081, 65,086 (Nov. 10, 2004) (to be codified at 40 C.F.R. pt. 180).
- "There is [an] extensive database available on glyphosate, which indicate[s] that glyphosate is not mutagenic, not a carcinogen, and not a developmental or reproductive toxicant." Glyphosate; Pesticide Tolerances, 73 Fed. Reg. 73,586, 73,589 (Dec. 3, 2008) (to be codified at 40 C.F.R. pt. 180).
- "EPA has concluded that glyphosate does not pose a cancer risk to humans." 78 Fed. Reg. 25,396, 25,398 (May 1, 2013) (to be codified at 40 C.F.R. pt. 180).
- "In 2014, EPA reviewed over 55 epidemiological studies conducted on the possible cancer and non-cancer effects of [g]lyphosate. Our review concluded that this body of research does not provide evidence to show that [g]lyphosate causes cancer and does not warrant any change in the EPA's cancer classification

<sup>1</sup> EPA's Office of Pesticide Programs, *Glyphosate Issue Paper: Evaluation of Carcinogenic Potential* at 141 (Sept. 12, 2016) ("EPA OPP Report"), <https://www.regulations.gov/document?D=EPA-HQ-OPP-2016-0385-0094>. The EPA OPP Report was prepared in anticipation of an EPA Scientific Advisory Panel meeting on glyphosate's carcinogenic potential.

<sup>2</sup> Cancer Assessment Review Committee, Health Effects Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, *Cancer Assessment Document – Evaluation of the Carcinogenic Potential of Glyphosate* at 10, 77 (Final Report, Oct. 1, 2015) ("EPA CARC Final Report"), <https://www.regulations.gov/document?D=EPA-HQ-OPP-2016-0385-0014>.

for [g]lyphosate.” *Agriculture Biotechnology: A Look at Federal Regulation and Stakeholder Perspectives: Hearing Before the S. Comm. on Agr., Nutrition, & Forestry*, 114th Cong. (2015) (statement of Dr. William Jordan, Deputy Director of EPA’s Office of Pesticide Programs), <http://www.ag.senate.gov/templates/watch.cfm?id=74793e67-5056-a055-64af-0e55900753b4>, at time stamp 55:05-56:20.

7. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 7 and therefore denies those allegations.

8. Monsanto denies the allegations in paragraph 8.

9. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 9 and therefore denies those allegations.

10. Monsanto denies the allegations in paragraph 10.

11. Monsanto denies the allegations in paragraph 11 and each of its subparts.

12. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 12 and therefore denies those allegations. Monsanto denies the remaining allegations in paragraph 12.

13. Monsanto denies the allegations in paragraph 13.

14. Monsanto denies the allegations in paragraph 14 and each of its subparts.

Monsanto denies the allegations in the unnumbered paragraph following paragraph 14.

In response to the “Wherefore” paragraph following paragraph 14, Monsanto demands that judgment be entered in its favor and against plaintiff; that plaintiff’s Complaint be dismissed, with prejudice; and that Monsanto be awarded costs of suit and reasonable attorney’s fees as allowed by law and such further and additional relief as this Court may deem just and proper.

Every allegation in the Complaint that is not specifically and expressly admitted in this Answer is hereby specifically and expressly denied.

#### **SEPARATE AND AFFIRMATIVE DEFENSES**

1. The Complaint, in whole or part, fails to state a claim or cause of action against Monsanto upon which relief can be granted.

1           2.       Plaintiff's claims are barred in whole because plaintiff cannot proffer any  
2 scientifically reliable evidence that the products at issue were defective or unreasonably  
3 dangerous.

4           3.       Any alleged negligent or culpable conduct of Monsanto, none being admitted,  
5 was so insubstantial as to be insufficient to be a proximate or substantial contributing cause of  
6 plaintiff's alleged injuries.

7           4.       Plaintiff's claims are barred, in whole or in part, because the products at issue  
8 were designed, manufactured, marketed and labeled with proper warnings, information, cautions  
9 and instructions, in accordance with the state of the art and the state of scientific and  
10 technological knowledge.

11          5.       Plaintiff's claims are barred, in whole or in part, because the products at issue  
12 were not defective or unreasonably dangerous in that they complied with, at all relevant times,  
13 all applicable government safety standards.

14          6.       Plaintiff's claims are preempted, in whole or in part, by applicable federal law  
15 relating to the design, testing, producing, manufacturing, labeling, distributing, modeling,  
16 processing, and supply of Roundup<sup>®</sup>-branded products and/or glyphosate-containing products.

17          7.       Plaintiff's claims are preempted, in whole or in part, because of U.S. EPA  
18 findings that glyphosate does not cause cancer in humans and/or because of U.S. EPA-approved  
19 product labeling.

20          8.       Any claims based on allegations that Monsanto misled, defrauded, made  
21 misrepresentations to, or withheld information from U.S. EPA are preempted by federal law.  
22 *See, e.g., Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341 (2001); *Nathan Kimmel, Inc. v.*  
23 *Dowelanco*, 275 F.3d 1199 (9th Cir. 2002).

24          9.       Plaintiff's claims are barred, in whole or in part, by the doctrine of primary  
25 jurisdiction, including by the authority delegated by Congress to the U.S. EPA.

26          10.       Plaintiff's claims are barred, in whole or in part, because plaintiff's injuries, if  
27 any, were the result of conduct of plaintiff, independent third parties, and/or events that were  
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1 extraordinary under the circumstances, not foreseeable in the normal course of events, and/or  
2 independent, intervening and superseding causes of the alleged injuries, including but not limited  
3 to plaintiff's pre-existing medical conditions.

4 11. The doctrines contained in Restatement (Second) of Torts § 402A, comments j  
5 and k, bar plaintiff's claims against Monsanto in whole or in part.

6 12. Applicable statutes of limitations and/or repose bar plaintiff's claims in whole or  
7 in part.

8 13. Plaintiff's misuse or abnormal use of the product or failure to follow instructions  
9 bar plaintiff's claims in whole or in part.

10 14. If plaintiff suffered injury or damages as alleged, which is denied, such injury or  
11 damage resulted from: (a) acts or omissions of persons or entities for which Monsanto is neither  
12 liable nor responsible or, in the alternative, Monsanto is entitled to an assessment of the relative  
13 degree of fault of all such persons and entities; or (b) resulted from diseases and/or causes that  
14 are not related or connected with any product sold, distributed, or manufactured by Monsanto.  
15 Such acts or omissions on the part of others or diseases or causes constitute an independent,  
16 intervening and sole proximate cause of plaintiff's alleged injury or damages.

17 15. Monsanto had no legal relationship or privity with plaintiff and owed no duty to  
18 him by which liability could be attributed to it.

19 16. Monsanto made no warranties of any kind or any representations of any nature  
20 whatsoever to plaintiffs. If any such warranties were made, which Monsanto specifically denies,  
21 then plaintiff failed to give notice of any breach thereof.

22 17. Plaintiff's claims are preempted in whole or part by the Freedom of Speech  
23 Clause of the First Amendment of the U.S. Constitution.

24 18. Plaintiff's claims are barred in whole or in part by plaintiff's own  
25 contributory/comparative negligence.

26 19. Plaintiff's claims are barred in whole or in part by plaintiff's own failure to  
27 mitigate damages.

1           20.     Plaintiff's claims are barred in whole or in part by the sophisticated user doctrine.

2           21.     Plaintiff's recovery, if any, shall be reduced by those payments that plaintiff  
3 receives from collateral sources.

4           22.     If plaintiff has been injured or damaged, no injury or damages being admitted,  
5 such injuries were not caused by a Monsanto product.

6           23.     Plaintiff's claims are barred or limited to the extent that plaintiff asserts claims  
7 that are governed by the laws of a state that does not recognize or limit such claims.

8           24.     Plaintiff's common law claims fail because the Mississippi Product Liability Act,  
9 Miss. Code Ann. § 11-1-63, provides the exclusive remedy for products-liability claims.

10          25.     Monsanto hereby gives notice that it intends to rely upon such other defenses as  
11 may become available or apparent during the course of discovery and thus reserves its right to  
12 amend this Answer to assert such defenses.

13           **WHEREFORE**, Defendant Monsanto demands judgment in its favor and against  
14 plaintiff, dismissing plaintiff's Complaint with prejudice, together with the costs of suit and such  
15 other relief as the Court deems equitable and just.

16                           **JURY TRIAL DEMAND**

17           Monsanto demands a jury trial on all issues so triable.

18  
19 DATED: December 12, 2017

Respectfully submitted,

20  
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